

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL NO. 04 -
v.	:	DATE FILED: October 15, 2004
BARRY SMITH	:	VIOLATIONS: 33 U.S.C. § 1319(c)(2)(A) (clean water act violation - 2 counts)
	:	Notice of additional factors

I N F O R M A T I O N

COUNTS ONE AND TWO

THE UNITED STATES ATTORNEY CHARGES THAT:

At all times material to this information

1. Defendant BARRY SMITH was the President, operator and approximate 75% owner of Babtronics, Inc., which did business as Park Refinishing ("Park Refinishing") at 123 North 3rd Street, Reading, Pennsylvania.
2. Park Refinishing was in the business of stripping and refinishing wood furniture. Employees of Park Refinishing stripped such items as cabinets, doors, and mantles, by using a high-pressure wash process which relied on chemicals, including methylene chloride, to remove laquer and paint finishes, including lead-based paint. Park Refinishing therefore generated waste water which contained lead.
3. Park Refinishing disposed of its waste water in part by discharging it through its plumbing pipes into the local sewer system, which in turn flowed to a local sewage treatment plant, also known as a Publicly Owned Treatment Works ("POTW"), owned and operated by the City of Reading ("Reading"). The Reading sewage treatment plant received and treated domestic sewage and industrial or process waste water, including the waste water of Park

Refinishing, to remove pollutants before discharging the treated waste water into the Schuylkill River, a navigable water of the United States.

4. The Clean Water Act (“CWA”) regulated Reading’s direct discharge of pollutants into the waters of the United States through a National Pollutant Discharge Elimination System (“NPDES”) permit. 33 U.S.C. §§ 1311(a), 1342. This permit limited the types and concentrations of pollutants which Reading could discharge lawfully.

5. The CWA also regulated the discharge of industrial pollutants by Park Refinishing into the Reading sewage treatment plant under provisions which require industries to “pretreat” waste water, so that POTWs can comply with their CWA permit limits and protect their sewage collection equipment. 33 U.S.C. § 1317. Reading had developed and implemented a regulatory program to control industrial discharges into its sewage collection system. The U.S. Environmental Protection Agency had approved Reading’s pretreatment program, making its requirements federally enforceable. 40 C.F.R. § 403.5(d).

6. Reading’s federally-approved CWA pretreatment program required Park Refinishing to obtain a permit governing its discharge of industrial waste water. After obtaining a permit application from defendant BARRY SMITH, Reading issued an industrial waste discharge permit to Park Refinishing, Permit M001, effective for five years, from January 1, 1996 through December 31, 2000 (hereinafter “the permit”). Among other requirements, the permit issued limited the concentration of lead in the wastewater of Park Refinishing to .5 milligrams per liter of waste water. The permit further required Park Refinishing to have its waste water tested annually for lead, methylene chloride, and other items and provide the results of such testing to Reading. Samples for these tests were to be taken from a vent trap located at

the point near the curb on the street where the lateral sewer line which carried Park Refinishing's waste water connected to the primary sewer line.

7. From 1996 through 2000, neither defendant BARRY SMITH or Park Refinishing submitted any waste water test results to Reading, as required by the permit.

8. Reading performed its own annual sampling of Park Refinishing's waste water during 1997 through 2000. Each sample was submitted by Reading to M.J. Reider Associates, Inc. ("M.J. Reider"), an analytical laboratory located in Reading, Pennsylvania. On each occasion, the testing performed by M.J. Reider revealed that the level of lead in Park Refinishing's waste water exceeded the permit's maximum limit for lead of .5 milligrams of lead per liter of waste water. Specifically, testing revealed the following: approximately 15.1 milligrams of lead per liter of waste water on or about September 9, 1997; approximately 2.11 milligrams of lead per liter of waste water on or about September 2, 1998; approximately .90 milligrams of lead per liter of waste water on or about September 30, 1999; and approximately 1.22 milligrams of lead per liter of waste water on or about August 9, 2000.

9. After each test described above, Reading notified defendant BARRY SMITH and Park Refinishing that the limits regarding lead in the permit had been violated on the dates at issue, and provided defendant BARRY SMITH and Park Refinishing with a copy of the laboratory results of the testing performed by M.J. Reider.

10. On or about each of the dates set forth below, at Reading, Pennsylvania, in the Eastern District of Pennsylvania, defendant

BARRY SMITH

knowingly discharged, and aided, abetted and wilfully caused to be discharged, pollutants from a point source into waters of the United States in violation of limitations contained in a permit issued under the requirements of Reading's pretreatment program, federally enforceable under 33 U.S.C. § 1317 and 40 C.F.R. § 403.5(d), that is, defendant BARRY SMITH knowingly discharged, and aided, abetted and wilfully caused to be discharged, lead from the plumbing system of Park Refinishing into the sewer and sewage treatment system of Reading, in violation of the maximum concentration for lead allowed by Park Refinishing's Permit M001, each violation constituting a separate count:

<u>COUNT</u>	<u>DATE</u>	<u>DESCRIPTION</u>
One	September 30, 1999	approximately .90 milligrams of lead per liter of water in Park Refinishing's waste water discharge
Two	August 9, 2000	approximately 1.22 milligrams of lead per liter of water in Park Refinishing's waste water discharge

All in violation of Title 33, United States Code, Section 1319(c)(2)(A) and Title 18, United States Code, Section 2.

NOTICE OF ADDITIONAL FACTORS

THE UNITED STATES ATTORNEY FURTHER CHARGES THAT:

1. In committing the offense charged in Counts One and Two of this information defendant BARRY SMITH:

- a. Committed an offense which resulted in an ongoing, continuous, and repetitive discharge, release, and emission of a hazardous and toxic substance into the environment, as described in U.S.S.G. § 2Q1.2(b)(1)(A).
- b. Committed an offense which involved transportation, treatment, storage and disposal without a permit, as described in U.S.S.G. § 2Q1.2(b)(4).

PATRICK L. MEEHAN
United States Attorney